In that case the Judicial Committee of the Privy Council said :

" A ' highway ' is the physical track along which an omnibus runs, whilst a ' route ' appears to their Lordships to be an abstract conception of a line of travel between one terminus and another, and to be something distinct from the highway traversed . . . . The Commissioner has to work out the routes on which a public transport service is to be provided, and in doing so he may have to specify the highway to be followed by the route since there may be alternative roads leading from one terminus to another, but that does not make the route and highway the same ".

The distinction is clearly recognized in section 54 (1) of the Ordinance, which provides with regard to omnibus licences that the licensing authority shall specify (*a*) the approved route or routes, (*b*) the two places which shall be the termini of each such route, and (*c*) the highway or the several highways to be followed by the omnibus in proceeding from one terminus to the other. There is no ground for giving to the word " route " a different meaning in sub-section (2) of the same section, where it requires the licensing authority to specify on a lorry licence the approved area of operation and the additional service or services, if any, which may be provided under that licence and the route or routes to be followed for the purposes of each such service. It is open to the appropriate authority to define the route by reference to the roads which may be traversed or by reference to intermediate points as well as to the terminal points of the route. In the present case the route has been defined solely by reference to its terminal points and it seems to me that the appellant's contention must prevail. There is nothing on the licence to show that the authority which specified the route intended that the lorry should travel between the terminal points only along a particular highway or highways. I set aside the conviction and sentence and I acquit the appellant.

Appeal allowed.

1950 *Present :* **Swan J.**

WIJEGOONEWARDENE, Petitioner, *and* KULARATNE, Respondent

S. C. 552—Application for a Writ of Quo Warranto *on M. A. Don Kularatne*

Writ of quo warranto—*Undue delay in making the application—Ground for refusal of writ.*

Where a defeated candidate in a village committee election applied for a writ of *quo warranto* when a period of five months had elapsed from the date of the election—

Held, that there was unreasonable delay in making the application and, in the absence of lawful excuse for the delay, the application should be refused.

THIS was an application for a writ of *quo warranto* in respect of the election of a Village Committee member.

Merryl Siriwardene, for petitioner.

J. W. Subasinghe, for respondent.

Cur. adv. vult.

June 6, 1950. SWAN J.—

This is an application for a writ of *quo warranto* against the respondent in order to obtain a declaration that he was not qualified to be elected as a member for the Moegahatenne Ward of the Village Committee of Maha Pattu in the Kalutara District. The alleged ground of disqualification is that at the relevant time the respondent was directly interested in a contract with the said Village Committee.

Two preliminary objections have been taken to the application, viz. :—

(1) that the affidavit does not aver that the respondent sat and voted as a member of the Village Committee ;

(2) that there has been undue delay in making the application.

There is authority for the proposition that a writ of *quo warranto* will not be granted unless the person against whom it is directed is actually in office—see *Ukku Banda v. Government Agent, S. P., and others* [1]. In that case the respondents whose election to the Village Committee was challenged were not in office at the time the application was made. The elections were held on 10th March, 1927. The application was made on 14th April, 1927, but the new Committee could not claim to function till 1st July as the term of office of the existing Committee did not expire till 30th June.

In the case of *de Zoysa v. Kulatilleke* [2] it was held that an application for a writ of *quo warranto* would not be granted to set aside an election to a Municipal Council when at the time the rule nisi was issued the respondent had not attended any meeting of the Council or done any other act showing that he had acted in or accepted the office of Municipal Councillor.

In that case the respondent maintained and the petitioner conceded that the respondent had done nothing to signify acceptance of office. The facts of the present case are not the same. Here the respondent does not allege, nor does the petitioner concede, that the respondent had not sat and voted as a member or resigned his office. In the circumstances I think the objection is purely technical.

The other ground urged for the discharge of the rule nisi is the undue delay in making the application. In the case of *Jayasooria v. de Silva* [3] Soertsz J. said that undue delay was a matter which the Court would take into consideration when called upon to exercise its discretionary power.

[1] *(1927) 29 N. L. R. 168.* [2] *(1945) 46 N. L. R. 143.*

[3] *(1940) 41 N. L. R. 510.*

In the affidavit filed by the respondent the question of undue delay has specifically been raised. No counter affidavit has been filed excusing the delay. The election took place on 8th June, 1949. The application was filed in the Registry on 14th November, 1949, i.e., more than five months after the election. In the absence of any excuse I think there has been undue delay on the part of the petitioner.

In the case of *Jayasooria v. de Silva*, referred to above, Soertsz J. thought five months' delay too long. Counsel for the petitioner says that in that case the challenged election was that of the Vice-Chairman of an Urban Council whose tenure of office was only one year and in the circumstances five months' delay was undue delay; in this case the members hold office for three years and therefore five months' delay would not be unreasonable.

The question of undue delay surely cannot depend on the length of an elected member's tenure of office. The criterion would be the period of time that has elapsed between the date of the election and the filing of the application. A successful candidate has a right to expect that the issue of the validity of his election should be disposed of as quickly as possible. And how can that be done if the challenger waits for five long months before making his challenge ?

Where a defeated candidate makes his application for a writ of *quo warranto* in the hope and with the object of unseating his successful rival I would, in the absence of a lawful excuse, unhesitatingly say that there has been unreasonable delay in making the application when a period of five months has elapsed from the date of the election.

The rule is discharged with costs.

Rule discharged.

1949 *Present:* **Gratiaen J.**

PUNCHISINGHO, Petitioner, *and* B. H. PERERA, Respondent

S. C. 478—Application for a Writ of Quo Warranto

Writ of quo warranto—*Village Committee Election—Disqualification for membership—Application of Local Authorities Elections Ordinance, No. 53 of 1946—Sections 2 (1) and 10 (1).*

An applicant, who seeks to set aside the election of a village committee member on the ground that he is the holder of a public office under the Crown and is, therefore, disqualified by section 10 (1) of the Local Authorities Elections Ordinance, must furnish material showing that the village committee in question is governed by the Ordinance.